SENATE, No. 2283

[Senate, February 24, 2010 - New draft reported on Senate, Nos. 228, 209, 233, 242, 243, 281 and 290 and House Nos. 364, 378, 428, 440, 455, 483, 524, 3433 and 3804 from the committee on Education.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

AN ACT RELATIVE TO BULLYING IN SCHOOLS.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

- SECTION 1. Section 1D of chapter 69 is hereby amended by striking the following in
- 2 line 30: "The standards may provide for instruction in the issues of nutrition, physical education,
- 3 AIDS education, violence prevention, and drug, alcohol and tobacco abuse prevention." and
- 4 inserting in place thereof the following:- "The standards may provide for instruction in the

- 5 issues of nutrition, physical education, AIDS education, violence prevention, including teen
- dating violence, bullying prevention, conflict resolution, and drug, alcohol and tobacco abuse
- 7 prevention."
- 8 **SECTION 2.** Section 37H of Chapter 71 is hereby amended by inserting after the word
- 9 "department" in line 9 the following new sentence:- "Said policies shall prohibit bullying as
- defined in section 37O and shall include the bullying prevention and intervention plan required
- 11 by section 37O."
- And further amended by inserting after the word "students" in line 26 the following new
- sentence:- "Said student handbook shall include an age-appropriate summary of the student-
- related sections of the bullying prevention and intervention plan required by section 37O."
- 15 **SECTION 3.** Chapter 71 is hereby amended by inserting after section 37N, the following
- 16 new section:-
- 17 Section 37O. As used in this section, the following words shall have the following
- meanings unless the context clearly requires otherwise:
- 19 (a) "Bullying" means the severe or repeated use by one or more students of a written,
- verbal, or electronic expression, or a physical act or gesture, or any combination thereof, directed
- at another student that has the effect of: (i) causing physical or emotional harm to the other
- student or damage to the other student's property; (ii) placing the other student in reasonable fear
- of harm to himself or of damage to his property; (iii) creating a hostile environment at school for
- 24 the other student; (iv) infringing on the rights of the other student at school; or (v) materially and
- substantially disrupting the education process or the orderly operation of a school.

"Cyber-bullying" means bullying through the use of technology or any electronic means.

The use of bullying in this section shall include cyber-bullying.

"Perpetrator" means the student who engages in bullying or retaliation.

"School grounds" means property on which a school building or facility is located; or property that is owned, leased or used by a school district, commonwealth charter school or non-public school for any school-sponsored activities, functions, programs, instruction or training.

"Victim" means the student who has been bullied or retaliated against.

(b) Bullying is prohibited on school grounds, property immediately adjacent to school grounds, at school-sponsored or school-related activities, functions or programs whether on or off school grounds, at school bus stops, on school buses or other vehicles owned, leased or used by a district or school, or through the use of technology or an electronic device owned, leased or used by a school district, commonwealth charter school, or non-public school.

Bullying is also prohibited at a location, activity, function or program that is not school-related or through the use of technology or an electronic device that is not owned, leased or used by a district or school if the act or acts in question create a hostile environment at school for the victim, infringe on the rights of the victim at school, or materially and substantially disrupt the education process or the orderly operation of a school.

Retaliation against a person who reports bullying, who provides information during an investigation of bullying, or who is a witness to or has reliable information about bullying is prohibited.

(c) Each school district, commonwealth charter school, and non-public school shall provide age- appropriate instruction on bullying prevention in each grade that is incorporated into the curriculum of the district or school. Said curriculum shall be evidence-based.

(d) Each school district, commonwealth charter school, and non-public school shall develop and update a bullying prevention and intervention plan in consultation with teachers, school staff, professional support personnel, school volunteers, administrators, community representatives, local law enforcement agencies, students, parents and guardians. Said consultation shall at a minimum include a public comment period. The bullying prevention and intervention plan shall be updated at least biennially.

Each bullying prevention and intervention plan at a minimum shall: 1) include descriptions of and statements prohibiting bullying, cyber-bullying and retaliation; 2) establish clear procedures for students, staff, parents, guardians, and others to report bullying or retaliation; 3) include a provision that reports of bullying or retaliation may be made anonymously, provided that no disciplinary action shall be taken against a student solely on the basis of an anonymous report; 4) establish clear procedures for promptly responding to and investigating reports of bullying or retaliation; 5) identify the range of disciplinary actions that may be taken against a perpetrator for bullying or retaliation; 6) establish clear procedures for restoring a sense of safety for a victim and assessing that student's needs for protection; 7) establish strategies for protecting from bullying or retaliation a person who reports bullying, provides information during an investigation of bullying, or is witness to or has reliable information about an act of bullying; 8) establish procedures consistent with state and federal law for promptly notifying the parents or guardians of a victim and a perpetrator, provided that the parents or guardians of a victim shall also be notified of the action taken to prevent any further

acts of bullying; and provided further that said procedures must provide for immediate notification to the local law enforcement agency where criminal charges may be pursued against the perpetrator; 9) include a provision that a student who knowingly makes a false accusation of bullying shall be subject to disciplinary action; and 10) include a strategy for providing counseling or referral to appropriate services for perpetrators and victims and for appropriate family members of said students.

The bullying prevention and intervention plan shall afford all students the same protection regardless of their status under the law. A school district, commonwealth charter school, or a non-public school may establish separate discrimination or harassment policies that include categories of students, and nothing in this section shall prevent a school district, commonwealth charter school, or non-public school from remediating any discrimination or harassment based on a person's membership in a legally protected category under local, state or federal law.

The bullying prevention and intervention plan shall include ongoing professional development to build the skills of all members of school staff, including but not limited to educators, administrators, school nurses, cafeteria workers, custodians, and paraprofessionals, to prevent, identify and respond to bullying. The content of such professional development shall include, but not be limited to: 1) developmentally appropriate strategies to prevent bullying incidents; 2) developmentally appropriate strategies for immediate, effective interventions to stop bullying incidents; 3) information regarding the complex interaction and power differential that can take place between and among the perpetrator, the victim, and any witnesses to the bullying; 4) research findings on bullying; 5) information on the incidence and nature of cyberbullying; and 6) internet safety issues as they relate to cyber-bullying.

The bullying prevention and intervention plan shall include provisions for educating parents and guardians about the bullying prevention curriculum of the district or school, how they can reinforce said curriculum at home, how they can support the district or school prevention and intervention plan, the dynamics of bullying, and online safety and cyber-bullying.

- (e)(i) Each school district, commonwealth charter school, and non-public school shall provide to students and their parents or guardians, in age appropriate terms and in the most prevalent languages of the students, parents or guardians, annual written notice of the relevant sections of the bullying prevention and intervention policy.
 - (ii) Each school district, commonwealth charter school, and non-public school shall provide to all school staff annual written notice of the bulling prevention and intervention policy. The faculty and staff at each school shall be trained annually on the bullying prevention and intervention plan applicable to the school. Relevant sections of the bullying prevention and intervention plan shall be included in a district or school employee handbook.
 - (iii) The bullying prevention and intervention plan shall be posted on the website of each school district, commonwealth charter school, and non-public school.
- (f) Each school principal or the person who holds a comparable role shall be responsible for the implementation and oversight of the bullying prevention and intervention plan at his school.
- (g) A member of a school staff, including but not limited to an educator, administrator, school nurse, cafeteria worker, custodian, and paraprofessional, shall immediately report any instance of bullying or retaliation he has witnessed or become aware of to the school principal or

to the school official identified in the bullying prevention and intervention plan as responsible for receiving such reports or both. Upon receipt of such a report, the school principal or his designee shall promptly investigate. If the school principal or his designee determines that bullying or retaliation has occurred, he shall (i) notify the local law enforcement agency if he believes that criminal charges may be pursued against the perpetrator; (ii) take appropriate disciplinary action; (iii) notify the parents or guardians of the perpetrator; and (iv) notify the parents or guardians of the victim, and to the extent consistent with state and federal law, notify them of the action taken to prevent any further acts of bullying or retaliation.

- (h) If an incident of bullying or retaliation involves students from more than one school district, commonwealth charter school, or non-public school, the district or school first informed of the bullying or retaliation shall promptly notify the appropriate administrator of other district or school so that both may take appropriate action.
- (i) A school employee, school volunteer, student, parent or guardian who, in accordance with the applicable bullying prevention and intervention plan, promptly reports in good faith an act of bullying or retaliation or an act which he reasonably believes is bullying or retaliation is immune from a cause of action for damages arising out of the reporting itself or any failure by the district or school to remedy the reported incident.
- (j) Nothing in this section shall be construed to abridge the rights of students that are protected by the First Amendment to the Constitution of the United States or by Article XVI, as amended, of the Constitution of the Commonwealth of Massachusetts.
- (k) Nothing in this section shall supersede or replace existing rights or remedies under any other general or special law.

(l) The department of elementary and secondary education, after consultation with the department of public health, the department of mental health, the attorney general and experts on bullying, shall (i) publish a model bullying prevention and intervention plan for school districts, commonwealth charter schools, and non-public schools to consider when creating their own plans and (ii) compile a list of bullying prevention and intervention resources, evidence-based curricula, best practices and academic-based research that shall be made available for use by schools. These resources may include, but shall not be limited to, print, audio, video or digital media; subscription-based online services; and on-site or technology-enabled professional development and training sessions. The department of elementary and secondary education shall biennially update the model bullying prevention and intervention plan and the list of these resources, curricula, best practices and research and shall ensure that they are posted on its website.

SECTION 4. Section 3 of chapter 71B is hereby amended by adding in line 154 after the word "proficiencies;" the following: "the skills and proficiencies to avoid and respond to bullying, harassment or teasing;".

SECTION 5. Section 98C of chapter 272 is hereby amended by striking out the first sentence and inserting in place thereof the following:- "Whoever publishes any false material whether written, printed, electronic, televised, or broadcast with intent to maliciously promote hatred of any group of persons in the commonwealth because of race, color, religion, national origin, ancestry, sex, sexual orientation, or disability shall be guilty of libel and shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both."

SECTION 6. School districts, commonwealth charter schools, and non-public schools must have a bullying prevention and intervention plan in compliance with this act and incorporate said plan into the district code of conduct required by section 37H of chapter 71 no later than December 31, 2010.

SECTION 7. The department of elementary and secondary education shall publish guidelines for the implementation of social and emotional learning curricula in kindergarten through grade 12 no later than June 30, 2011. For purposes of this section, social and emotional learning shall mean the processes through which children acquire the knowledge, attitudes, and skills they need to recognize and manage their emotions, demonstrate caring and concern for others, establish positive relationships, make responsible decisions, and handle challenging social situations constructively.